

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

RANDY DUTTON,)
vs.)
Plaintiff,)
CAROLYN W. COLVIN,)
Acting Commissioner of the Social,)
Security Administration)
Defendant.)

NO. CIV-13-1339-HE

ORDER

Plaintiff Randy Dutton filed this action appealing the final decision of the Commissioner of the Social Security Administration denying his application for supplemental security income benefits. Consistent with 28 U.S.C. § 636(b)(1)(B), the case was referred to Magistrate Judge Charles B. Goodwin, who has recommended that the Commissioner's decision be affirmed [Doc. #13]. Plaintiff has filed objections to the Report and Recommendation [Doc. #14]. Having conducted *de novo* review, the court concludes that the decision of the Commissioner should be **AFFIRMED**.

Plaintiff applied for benefits on February 15, 2011, alleging that a broken neck rendered him disabled on November 27, 2010. After this application was twice denied (initial consideration and reconsideration), plaintiff requested a hearing in front of an administrative law judge (“ALJ”). This hearing was held on June 19, 2012. The ALJ issued an unfavorable decision on August 24, 2014, concluding that plaintiff was not disabled and therefore not entitled to benefits. The Appeals Council denied plaintiff’s request for review,

thus making the decision of the ALJ the final decision of the Commissioner.

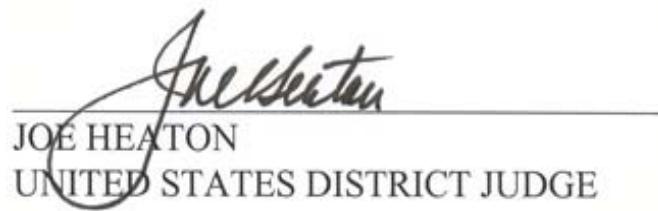
In his appeal to this court, plaintiff claims that the determination of residual functioning capacity (RFC) did not adequately reflect all of his limitations. Because the ALJ gave great weight to the Medical Source Statement (MSS) of plaintiff's treating physician, Dr. Timothy Puckett, plaintiff claims that the RFC should have included more limitations, including ones based on plaintiff's (1) limited Range of Motion (ROM), (2) headaches, (3) need to shift positions at will, and (4) ability to tolerate stress. Magistrate Judge Goodwin analyzed each "limitation" separately and concluded the RFC determination was consistent with substantial evidence in the record—notably including Dr. Puckett's MSS which, even when viewed in isolation, supports the ALJ's findings. Based on this conclusion,¹ Judge Goodwin recommended that the decision of the Commissioner be affirmed.

Plaintiff's objections to the Report and Recommendation largely reurge the arguments addressed below and do not persuade the court that the magistrate judge's recommendation was in error. Having conducted the required *de novo* review, the court agrees that the ALJ did not err by failing to include plaintiff's enumerated limitations in the RFC. Accordingly, the court **ADOPTS** the Report and Recommendation, a copy of which is attached to this order, and **AFFIRMS** the final decision of the Commissioner.

¹ Plaintiff also claims that the ALJ was required to, but did not, consider plaintiff's severe post-status cervical fracture. As Judge Goodwin noted, however, conclusory allegations are insufficient to raise the issue on appeal.

IT IS SO ORDERED.

Dated this 26th day of March, 2015.



Joe Heaton
UNITED STATES DISTRICT JUDGE